2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Working paper on strengthening International Atomic Energy Agency safeguards, presented by Spain on behalf of the European Union

Safeguards of the International Atomic Energy Agency (IAEA) are a key instrument to deter nuclear proliferation and to help ensure a responsible development of nuclear energy. The main aim of the IAEA verification regime is to prevent the diversion of nuclear material from peaceful activities, to "ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose" (article III A.5 of the Statute) and to reinforce mutual trust and transparency as well as to allow all States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, under secure conditions and with mutual confidence, to exercise their inalienable right to develop research, production and use of nuclear energy for peaceful purposes without discrimination (Treaty article IV).

The European Union stresses the need for reinforcing the capabilities of IAEA for early detection and prevention of proliferation activities. The 2010 Review Conference constitutes an opportunity to foster this.

Existing instruments (comprehensive safeguards agreements and additional protocols) provide the legal framework. The Review Conference should recognize the comprehensive safeguard agreements together with additional protocol as the current safeguards standard. Strengthening IAEA under this framework implies making full use of its legal authority.

1. IAEA could be encouraged to:

(a) Make full use of the authority available to it, in particular:

(i) By pursuing the development of a State-level safeguards approach based on a comprehensive understanding of the activities and technologies implemented in States; by pursuing the implementation of integrated safeguards, internal pooling of the information available to the Agency, and conducting on-site control activities on the basis of the broadest possible analysis of all available information (information-driven safeguards);

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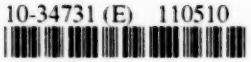

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(ii) By enforcing strictly the obligation resting on States to provide information and clarifications to the Agency, including, in particular, the provision of design information on nuclear facilities as soon as a decision is taken to build or authorize construction or to modify a facility, as well as the Agency's standing right to verify the design information over the life of a facility, including decommissioning, as provided for by revised code 3.1 of the general part of the subsidiary arrangement to the model comprehensive safeguards agreement;

(iii) By expanding the use of modern technologies for measurement and remote monitoring, continuous monitoring, and measures to detect undeclared activities, and by relying more broadly on information from and cooperation with strong independent national or regional safeguards systems, such as the European Atomic Energy Community (EURATOM);

(iv) By granting States assurances, as and where necessary and legitimate, that their confidential information will remain protected when IAEA fulfils its verification mission under comprehensive safeguards agreements in facilities that are described as defence-related;

(v) By effecting, whenever the Director General determines that circumstances call for it, a special inspection as provided for by paragraphs 73 (b) and 77 of the model comprehensive safeguards agreement (IAEA document INFCIRC/153). The secretariat could be encouraged to put in place appropriate technical and logistical preparedness measures in order to facilitate their implementation;

(b) Enhance the use of information relevant to the delivery of its mandate:

(i) By enhancing its capability to gather, assess and use information in areas that may be related to nuclear activities, but in which, however, no nuclear material is involved, inasmuch as this capability is necessary for the Agency to acquire a full comprehension of the nuclear activities of a State in relation to its commitments under its safeguards agreement;

(ii) By defining areas where information stemming from export control regimes or from bilateral nuclear cooperation agreements might be useful to the accomplishment of its mission. The rules under which such information could be made available to, and used by, the Agency should be carefully considered in order to protect the integrity of those regimes and confidentiality, while keeping in mind that IAEA is not and shall not become an export control regime;

(iii) By implementing an integrated use of information obtained from all sources IAEA deems credible, in order to enhance its capability to request adequate clarification from the State being investigated;

(c) Circulate more accurate information, notably in the event of non-compliance with commitments or cooperation regarded as inadequate over the long term:

(i) By broadening the information contained in its annual safeguards implementation report and, whenever the Director General determined that it would further the IAEA goals, by naming those States in regard to which difficulties remain, including in the section likely to be made public;

(ii) By reviving the IAEA Director General's former practice of submitting reports to and briefing the Security Council on a regular basis;

(d) Actively continue providing assistance to State parties, with a view to helping them to implement relevant instruments.

2. IAEA member States could be encouraged to:

(a) Pursue and intensify activities aimed at promoting the universalization of the IAEA safeguards regime (comprehensive safeguards agreement and additional protocol) by conducting demarches, organizing regional seminars and providing assistance in the implementation of relevant instruments;

(b) Sign, ratify and bring into force, for those States that have not done so yet, an additional protocol to their safeguards agreement;

(c) Accede to the amended small quantities protocol in the case of those States that have a small quantities protocol in force;

(d) Support the role of the Security Council in situations where commitments are being violated, as reaffirmed by Security Council resolution 1887 (2009);

(e) Adopt the "voluntary reporting scheme" on imports and exports of nuclear material and exports of specified equipment and non-nuclear material;

(f) Adopt voluntary transparency measures in order to restore confidence of the international community, in the event of outstanding issues, such as voluntary application of all or specific provisions of the additional protocol as a temporary measure in cases where an additional protocol is not in force; and granting IAEA the access it requests to information, sites, persons and entities prior to implementing its verification procedures. Introducing a voluntary code of best practices could be explored in this connection;

(g) Support in IAEA competent bodies the suspension of access to the Agency's technical cooperation and assistance programmes in appropriate areas, in case of non-compliance with obligations under the Treaty on the Non-Proliferation of Nuclear Weapons reported to the Board of Governors;

(h) Expand the range of actions IAEA might take beyond the current binary alternative of compliance/non-compliance and adopt guidelines relating to the responses the Agency could implement in different situations ranging, for example, from outstanding issues to violations of specific commitments, such as notification of such cases to the Board of Governors, informing the Security Council, and agreeing with involved States on action plans aimed at solving outstanding issues in a given time frame and providing them with the necessary guidance and assistance.